

Notes taken in Short-band of a Speech in the House of Lords on the Debates of  
appointing a day for Hearing Dr. Shirley's Cause, Octob. 20. 1675.

My Lords,

**O**ur All is at Stake, and therefore you must give me leave to speak freely before we part with it: My Lord Bishop of *Sarum* is of Opinion, that we should rather appoint a day to consider what to do upon the Petition, then to appoint a day of hearing: And my Lord Keeper (for I may name them) at a Committee of the whole house, tells us in a very Eloquent and Studied Language: That he will propose us a way far less lyable to Exceptions, and much less offensive to our Privileges than that of appointing a day of Hearing. And I beseech your Lordships, did you not after all these fine words, expect some admirable proposals, but it ended in this; that your Lordships should appoint a day, nay a very long day, to consider what to do in it: And my Lord hath undertaken to convince you, that this is the only course by several undeniable reasons. The first of which is, that it is against our Judicature to hear this cause which is not proper for us, nor ought to be relieved by us. To this my Lords give me leave to answer, that I did not expect from a man professing the Law; that after an answer by order of the Court was put in, and a day had been appointed for hearing, which by some accident was set aside, and the Plaintiff moving for a second day to be assigned; that ever without hearing Council on both sides, the Court did enter into the merits of the cause. And if your Lordships should do it in a cause attended with the circumstances as this is, it would not only be an apparent injustice, but a plain subterfuge to avoid a point you durst not maintain.

But my Lords second reason speaks the matter more plainly, for it is because it is a doubtful case whether the Commons have not privilege; therefore my Lord would have you to appoint a further & very long day to consider of it, which indeed in plain *English* is, that your Lordships would confess upon your own Books that you conceive it on second thoughts a doubtful case, and that for no other reason, but because my Lord Keeper thinks it so, which I hope will not be a reason to prevail with your Lordships, since you cannot yet by experience tell that his Lordship is capable of thinking your Lordships in the right in any matter against the Judgment of the House of Commons; 'tis so hard a thing even for the ablest man to change ill habits.

But now my Lords third reason is the most admirable of all, which he styles unanswerable, (*viz.*) That your Lordships are all convinced in your own Conscience that this (if prosecuted) will cause a breach: I beseech your Lordships to consider whether the Argument thus applyed would not overthrow the Law of Nature and all the Laws of right and property in the World; for it is an Argument, and a very good one, that you should not stand or insist on claims where you have not a clear right, or where the question is not of consequence and moment, in a matter that may produce a dangerous and pernicious breach between Relations, Persons or Bodies, politick joyned in Interests and high Concerns together: So on the other hand, if the obstinacy of the parties in the wrong shall be made an unanswerable Argument for the other party to recede and give up his just rights, how long shall the people keep their Liberties, or the Princes and Governours of the World their Prerogatives? How long shall the Husband maintain his Dominion, or any man his property from his Friends, or his Neighbours Obstinacy?

But my Lords, when I hear my Lord Keeper open so Eloquently the fatal consequence of a breach, I cannot forbear to fall into some admiration how it comes to pass; that (if the consequences be so fatal) the Kings Ministers in the House of Commons; (of which I am sure there are several that are of the Cabinet, and have easie resort to his Majesty, and have the direction and trust of his Affairs;) I say that none of these should press these consequences there, or give the least stop in the career of that House in this business; but that all the Votes concerning this affair, nay, even that very Vote that no Appeal is cognoscible by the House of Lords, should pass *nemine contradicente*, and yet all the great Ministers here, yea Bishops and other Lords of greatest dependance on the Court contend this point, as if it were *pro aris & foris*: I hear His Majesty in *Scotland* hath been pleased to declare against Appeals in Parliament. I cannot much blame the Court if they think (the Lord Keeper and Judges being of the Kings naming, and in his power to change) that the justice of the Nation is safe enough, and I my Lords may think so too during this Kings Reign; though I hear *Scotland* (not without reason) complain already. Yet how future Princes may use this power, and how Judges may be made, not men of Ability or Integrity, men of Relation and dependance, who will do what they are commanded; and all mens Causes come to be judged and Estates disposed of as great men at Court please, is to be considered.

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My Lords, the constitution of our Government hath provided better for us, and I can never believe so wise a Body as the House of Commons will prove that foolish woman that pluck'd down her house with her hands.

My Lords, I must presume to say something, to wit, what was offered by my Lord Bishop of *Sarum*, a man of great Learning and Ability, and always versed in a stronger and closer way of reasoning than the business of the Noble Lord I answered before did accustom him to; and that Reverend Prelate hath stated the matter very fairly upon two heads.

1. Whether the hearing of Causes and Appeals, and especially in this point where the Members have privilege, be so material to us, that it ought not to give way to the reason of State of greater Affairs that press us at this time.

2. If the business be of that moment, yet whether the appointing a day to consider of the Petition would prove of that consequence and prejudice to our cause.

My Lords; to these give me leave in the first place to say that this matter is no less than your whole Judicature, and your Judicature is no less than the Life and Soul of the Dignity of the Peerage of *England*; you will quickly grow burthened, if you grow useless, you have now the greatest and most useful end of Parliament principally in you, which is not to make new Laws, but to redress Grievances and to maintain the Old Land-Marks. The House of Commons business is to complain to your Lordships to redress not only the Complaints from them that are the Eyes of the Nation, but also other particular persons that address to you. A Land may groan under a multitude of Laws, and I believe ours does, and when Laws grow so multiplied yearly, they oftner prove snares than the directions and security of the people: I look upon it as the ignorance and weakness of the latter Age, if not worse, the effect of the designs of ill men, that it's grown a general Opinion, that when there is not a particular direction in some Act of Parliament the Law is defective, as if the Common Law had not provided much better, shorter and plainer for the peace and quiet of the Nation, than intricate, long and perplexed Statutes do, which has made work for the Lawyers, given power to the Judges, lessened your Lordships power, and in a good measure unhinged the Security of the People.

My Lord Bishop tells you, your whole Judicature is not in question, but only the Privilege of the House of Commons, of their Members not appearing at your Bar. My Lords, were it no more, yet that for Justice and the peoples sake you ought not to part with, how far a privilege of the House of Commons, their Servants and those they own doth extend, *Westminster-hall* may with grief tell your Lordships, they have neither Precedents, nor Reason, nor any Justifiable pretence to shew against us; and therefore my Lords if you part with your undoubted right merely for asking, where will their asking stop. And my Lords, we are sure it doth not stop here, for they have already *nemine contradicente* Voted against your Lordships power of Appeal from any Court of Equity, so that you may plainly see where the confusion and reason of State means to stop, not one jot of laying your whole Judicature aside, for the reason of passing the Kings Money if not interrupting good Laws, or whatever else, must of necessity avoid all breach upon what score soever. And your Lordships plainly see the breach will be as well made upon our Judicature in general, as upon this; so that when your Lordships have appointed a day, a very long day to consider whether Dr. *Shirley's* Cause be not too hot to handle; and when you have done the same for Sir *Nicholas Stoughton*, whose Petition I hear is coming in, your Lordships must proceed to a Vote to lay aside all private business for six Weeks: For the phrase of private business had obtained this last Age upon that which is your most publick duty and business, namely the administration of Justice. And I can tell your Lordships, besides the reason that leads to it, that I have some intelligence of desiring such a Vote; for on the second day of our sitting, at the rising of the Lords House there came a Gentleman into the Lobby, belonging to a very great Person, and asked in great haste, are the Lords risen, have they passed the Vote, and being asked what Vote, he answer'd, the Vote of no private business for six Weeks. My Lords, if this be your business, where are you; if we are to post-pone our Judicature for fear of offending the House of Commons for six Weeks, that they may in the interim pass the Money and other acceptable Bills that His Majesty thinks of importance. Are so many wise men of the House of Commons so lull'd to pass all these so acceptable things, and when they have done to let us loose upon them, will they not remember this next time there is want of Money, or may they not rather be assured by those Ministers that are among them, and go on so unanimously with them, that the King is on their side in this Controversy: And then I beg your Lordships where are you, after you have but the last Sessions asserted your rights of Judicature so highly even in this point; and after the House of Com. had gone so high against you on the other hand, as to pass their Declaration and Remonstrance on *Westm.*

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*ball Dobbs* : The very next Session after you postpone the same Causes, and not only those, but all Judicatures whatever ; I beseech your Lordships, will not this prove a fatal President and Confession against your selves : 'Tis a maxime, and a rational one amongst Lawyers, that one President where the Case hath been contested, is worth a 100. where there hath been no Contest. My Lords, in saying this I humbly suppose I have given sufficient Answer to my Lord Bishops two Questions, for it is a plain Confession that it is a thing never heard of before, for it is the very same Case that you formerly Ordered, and so strongly asserted, so that upon time and all the deliberation imaginable you declare yourselves doubtful, and you put your selves out of your own hands that power you have no reason to believe on your sides in this question.

My Lords, I have all the Duty imaginable to His Majesty, and should with all submission give way to any thing that he should think of Importance to His Affairs, but in this point it is to alter the Government.

If you are asked to lay this aside, yet there is no reason of State can be an Argument to your Lordships to turn your selves out of that Interest you have in the Constitution of the Government : It is not only your concern, but it is the concern of the poorest man in *England*, that you keep your Station. It is your Lordships concern, and that so highly, that I will be bold to say the King can give you no recompence for it. What are empty Titles ? What is present Power ; or Riches, or great Estate, wherein I have no firm no fixed Property ? 'Tis the constitution of the Government, and maintaining it that secures your Lordships, and every man else in what he has ; the poorest Lord, if the Birthright of the Peerage be maintained, has a fair prospect before him for himself and his Posterity, but the greatest power with greatest Title and Riches, is but a mean Creature, and maintains those Monarchies no otherwise then by servile and low flatteries, and upon uncertain terms.

My Lords, 'Tis not your Interest, but the peoples that you maintain your rights, for let the House of Commons and Gentry of *England* think what they please, there is no Prince that ever governs without a Nobility or an Army ; If you will not have one, you must have the other, or else the Monarchy cannot long support it self from tumbling down into a Democratical Republick. Your Lordships and the people have the same Cause, and the same Enemies. My Lord, would you be in favour with the King ; 'tis a very ill way to it, to put your selves out of a future capacity to be considerable in his service. I do not find in Story or Modern Experience, but that it is better, and a man is much more regarded that is still in a capacity and opportunity to serve, then he that hath wholly deprived himself of all for his Princes sake. And therefore I declare I will serve my Prince as a Peer, but will not destroy the Peerage to serve him.

My Lords, I have heard of twenty foolish Models and Expedients to secure the Justice of the Nation, and yet to take this right from your Lordships : As the King by his Commission to appoint Commissioners to hear Appeals, or that the twelve Judges should be the persons ; or that persons should be appointed by Act of Parliament, which are all not only to take away your Lordships just right, which ought not to be altered any more than any other part of the Government, but are in themselves when well weighed, ridiculous : I must deal freely with your Lordships, these things could never have risen in mens minds, but that there has been some kind of provocation that has given the first rise of it. I pray your Lordships forgive me if on this occasion I put you in mind of Committee-Dinners, and the scandal of it, those droves that attend all Causes ; 'twas come to that pass, that men even hired or borrowed of their Friends handfom Sisters or Daughters to deliver their Petitions, but yet for all this I must say that the Judgments have been impartial unless in one or two Causes, and those we owe most to that Bench from whence now I apprehend most danger.

There is one thing I have almost forgot to speak to, which is the conjuncture of time ; the hinge on which our reason of State turns ; and to that give me leave to say, if this be not a time of leisure to vindicate your Priviledges, you must never expect one ; I would almost say that the harmony, good agreement and concord that is to be prayed for at other times may be fatal to us now : We owe the Peace of this last two years and disengagement from the *French* Interest, to the two Houses differing from the sense and Opinion of *White-hall* : So as at this time the thing in the World this Nation has most reason to apprehend is a general Peace, which cannot now happen without very advantageous terms to the *French*, and disadvantageous to the house of *Austria*.

We are the Kings great Councillors, and if so, have right to differ, and give contrary Counsells to those few that are nearest about him : I fear they would advance a general Peace, I am sure I would advise against it, and hinder it at this time by all the ways imaginable : I heartily wish nothing from you may add weight and reputation to those Councillors who would assist the *French* : No Money for Ships, nor preparations you can make, nor personal assurance our King can have, can secure us from the *French* if they are at leisure ; he is grown too potent for us at Sea, he has built 24 Ships this last year, and has 30. more in number then we ; besides the advantage, that our Ships are all out of Order, and his so exquisitely provided for, that every Ship has its particular Store-house, 'tis incredible the Money he hath, and is bestowing in making Harbours, he makes  
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Nature it self give way to the vastness of his Expence: And for all this shall a Prince so wise, so intent upon his Affairs, be thought to make these preparations to sail over Land and fall on the back of *Hungary*, or is it possible he should oversee his Interest in seizing of *Ireland*, a thing so feazable to him if he be Master of the Seas, (as he certainly now is,) and which when attained, gives him all the *Southern and Mediteranean, East and West-India Trade*, and renders him both by Scituation and Excellent Harbours Master of the Seas without dispute. My Lords, I conclude this point, I fear the Court of *England* is greatly mistaken in it, and I do not wish them the reputation of the concurrence of the Kingdoms, and this out of the most sincere Loyalty to His Majesty, and love to my Nation.

My Lords, I have but one thing more to trouble you with, and that peradventure a consideration of the greatest weight and concern both to your Lordships and the whole Nation: I have often seen in this house that the Arguments with the strongest reason and most convincing to the Lay Lords in general, have not had the same effect upon the Bishops Bench, but that they have unanimously gone against us in matters that many of us have thought essential and undoubted rights: And I consider that 'tis not possible that men of great Learning, Piety and Reason, (as their Lordships are,) should not have the same care of doing right, and the same conviction what is right upon clear reason that is offered, which other your Lordships have. And therefore my Lords, I must necessarily think we differ in Principles, and then 'tis very easie to apprehend that the clearest sense to men of my Principles may not at all perswade or affect the Conscience of the best man of a different one. My Principle is, that the King is King by Law, and by the same Law that a poor man enjoys his Cottage, and also it becomes the concerns of every man in *England* that has but his liberty, to maintain and defend to his utmost the King in all his Rights and Prerogatives. My Principle is also that the Lords House and the Judicature and right belonging to it, are an Essential part of the Government and established by the same Law, the King governing and administering Justice by his House of Lords, and advising with both his Houses of Parliament in all important matters, is the Government I own, am born under, and am obliged to. If ever there should happen in future Ages (which God forbid) a King governing by an Army without his Parliament, 'tis a Government I own not, was not born under, nor am obliged to, and according to this principle, every honest man that holds it must endeavour equally to preserve the Frame of the Government in all the parts of it, and cannot satisfy his Conscience to give up the rights of the Lords House for the service of the Crown, or to take away the just Rights and Priviledges of the Commons to please the Lords. But there is another Principle got into the World my Lords, that hath not been long there: For Archbishop *Land* was the first Author that I remember of it, and I cannot find that the Jesuits, or indeed the Papist Clergy hath ever owned it, but some of the Episcopal Clergy of the *British Isles*; and as it's new, so 'tis withall the most dangerous and destructive Doctrine to our Government and Law that ever was: 'Tis the first of the Clamours published by the Convocation in the year 1640. *That Monarchy is of Divine Right*. This Doctrine was then Preached up by *Sybothorpe* and *Mannwaringe*, and others of later years, by Books published by Dr. *Sanderson* Bishop of *Lincoln* under the name of Archbishop *Usher*, and how much it is spread amongst our dignified Clergy is very easily known.

We all agree that the King and Government is to be obeyed for Conscience sake, and that the Divine presence requires not only here, but in all parts of the World obedience to lawful Governours. And that this Family are our Kings, and his particular frame of Government is our lawful Constitution, but obliges us in owning only the particular Laws of our Country.

This *Laudian* Doctrine was the root that produced the Bill of Test last Session, and some very perplexed Oaths that are of the same nature with that end, yet imposed by several Acts of Parliament.

In a word, if this Doctrine be true, our *Magna Charta* is of no force, our Laws are but rules amongst our selves during the Kings pleasure; Monarchy if of Divine right cannot be bounded or limited by humane Laws, nay what is more, cannot bind it self, and all our claimes of right by the Law, or the Constitution of the Government, all the Jurisdiction and priviledge of this House, all the Rights and Liberties of the House of Commons, all the Properties and Liberties of the people are to give way not only to the Interest, but the Will and Pleasure of the Crown, and the best and worthiest of men holding this Principle, must Vote to deliver up all we have, not only when reason of State, but when the pleasure of the King will have it so.

Therefore my Lords you see how necessarily it is that our Principles be known, and how fatal to us all it is that this principle should be suffered to spread any further.

My Lords, To conclude, your Lordships have seen of what consequence this is to you, that the appointing a day to consider is no less then declaring your selves doubtful upon second and deliberate thoughts, that you put your selves out of your own hands into a more then morally probability of having this Session made a President against you. You see your duty to your selves and the people, and that 'tis really not the Interest of the people, but may be the inclination of the Court that you loose the power of Appeals: But I beg that our House may not be *Felo de se*, but that your Lordships in this Affair will take the only course to preserve your selves, and appoint a day this day three weeks for the hearing of Dr. *Shirley's* Cause, is my humble Petition.

